

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 03 TAIPEI 002526

SIPDIS

SENSITIVE

STATE FOR EAP/RSP/TC AND EB/TPP, STATE PASS AIT/W AND USTR  
FOR KI AND GRIER, USDOC FOR  
4431/ITA/MAC/AP/OPB/TAIWAN/MBMORGAN

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [TW](#)

SUBJECT: TAIWAN'S TAKE ON GOVT PROCUREMENT AND GPA

1. Summary: AIT met with Deputy Director General Su Ming-tong of Taiwan,s Public Construction Commission (PCC) June 3 to discuss their reaction to criticisms raised by U.S. business in the AmCham annual White Paper, Taiwan,s efforts to enter the WTO GPA and the effect of planned privatization on the procurement policy of Chunghwa Telecom (CHT). The PCC expressed frustration with what they viewed as inaccurate and unfair criticism of Taiwan,s public procurement policy and plan to respond to the AmCham by mid-June. Taiwan is counting on the EU to win support for a two-step approach to resolving nomenclature issues in the WTO Agreement on Government Procurement (GPA) Committee but the EU has thus far failed to convince China. Since CHT is listed in Taiwan,s GPA accession offer, privatization is not expected to result in an immediate change in procurement practices. End Summary.

=====  
AmCham White Paper Lists Complaints on Procurement  
=====

2. Taiwan,s PCC is not only responsible for administering public procurement law, but is also charged with mediating and adjudicating disputes and as such is a key venue for American companies seeking to bid on government contracts. The annual AmCham White Paper issued in May listed a number of issue areas where U.S. companies believe Taiwan,s procurement system fails to live up to international standards. A trend towards decentralization of government procurement and the resulting inefficiencies as each locale develops its own requirements has led international companies to complain that they are being shut out of the procurement market. U.S. companies also complain that Taiwan contracts fail to meet important internationally recognized standards for limits on liabilities, including for consequential damages, and do not give contractors the right to terminate the contract for cause. Taiwan contracts also allow compensation adjustments only when the scope of work exceeds planned work by a certain level. U.S. contractors believe this places an undue burden on contractors to provide uncompensated service beyond the original scope of work. The complete text of the Taiwan White Paper can be found at the AmCham Taipei website: [www.amcham.com.tw](http://www.amcham.com.tw)

=====  
Taiwan Preparing Response to Critics  
=====

3. PCC Deputy Director General Su Ming-tong expressed disappointment that the AmCham Infrastructure Committee had again this year raised liability-related issues, noting that the PCC had amended the regulations regarding terms and conditions in October 2004. He said he had requested sample government contracts from the U.S. and the EU that cap liability for consequential damages, but had never received such examples, implying that such examples did not exist. Su referenced several articles in the Taiwan government procurement law that he claimed addressed the AmCham complaints and promised that his office would prepare a written response to the AmCham,s criticisms by mid-June.

4. In response to AmCham,s concern that Taiwan government procurement is being decentralized, leading to inconsistent regulations and requirements, Su acknowledged that some large infrastructure projects, especially for municipal water and sewage, were being devolved to the local level and tendered as Build-Operate-Transfer (BOT) projects because the Ministry of the Interior (MOI) lacks the staff and budget to properly manage them. As BOT projects, there is no centralized procurement process, and they are not covered by the requirements of the government procurement law. Su said that the WTO GPA Committee is currently considering whether to include BOT projects under government procurement laws, but that several countries, including the US, opposed doing so.

=====  
Taiwan's View of GPA Accession Process  
=====

5. Turning to the current status of Taiwan,s efforts to

accede to the WTO Agreement on Government Procurement (GPA), Su said he understood that the EU had proposed a two-phase plan. The Government Procurement committee would first be asked to agree to a resolution defining nomenclature for all members in a way that would make no mention of sovereignty. Once agreed, the second step would be to admit Chinese Taipei to the committee without additional language on sovereignty. According to Su, the EU tried and failed to win PRC support in May for this two-step proposal. China continues to insist that language spelling out Taiwan's lack of sovereignty be included in any Chinese Taipei accession annex. Su believes the EU is asking the US, Japan and Canada to pressure the Chinese to relent and that an EU representative will soon visit Beijing to discuss this issue. However, Taiwan is concerned that the newly appointed Korean chair of the GPA may be more susceptible to pressure from Beijing.

16. Su acknowledged that a bilateral government procurement agreement would be a way around the WTO nomenclature issue, noting that the EU had also proposed a bilateral agreement. But he insisted that Taiwan should maintain its focus on entering the WTO GPA committee, suggesting that bilateral agreements would remove any incentive for the EU and US to push for WTO GPA accession on behalf of Taiwan. Other Taiwan officials have echoed Su's concern that a bilateral GPA would dampen U.S. interest in pushing for Taiwan's participation on the WTO GPA.

=====  
Privatization Unlikely to Affect CHT Procurement  
=====

17. Chunghwa Telecom, (CHT) plans to "privatize" by selling American Depository Receipts on the New York Stock Exchange has led to questions about whether CHT will continue to follow the requirements of Taiwan's government procurement law after it becomes a "private" company. According to the PCC, a privatized CHT would not normally be subject to the requirements of this law. However, CHT was listed in Taiwan's WTO GPA accession offer. To withdraw CHT from the offer would require the consent of all GPA members. According to Su, Nippon Telephone and Telegraph (NTT) was not withdrawn from Japan's accession offer when the U.S. and EU protested.

18. Su opined that Chinese Taipei would not want to revise its accession offer prior to acceding to the GPA committee and therefore, CHT would continue to be bound by the requirements of Taiwan's government procurement law. He suggested also that the company management might feel comfortable with the current procurement procedures and be reluctant to make changes. CHT designed Taiwan's government procurement database and electronic bidding system, and continues to operate it and provide technical support. CHT gains some advantages from this position and might see continued value in voluntarily following government procurement practices.

=====  
Comment: PCC Spinning  
=====

19. (SBU) Comment: Most of the advocacy requests that come to AIT's Commercial Section relate to government procurement issues. Although U.S. companies do win some government tenders, firms complain that the Taiwan procurement process lacks transparency and that the process for dispute resolution is tilted in favor of local entities. The PCC has a reputation for using the government procurement law to throw obstacles in the path of U.S. companies interested in Taiwan government tenders. Su cited several articles of the government procurement law in response to complaints raised in the White Paper, but when pressed to confirm that these provisions truly addressed specific issues, he was unable to do so. He also sidestepped questions about decentralization by pinning the blame on increased numbers of BOT projects. In fact, BOT projects do not figure in most of the complaints raised by U.S. companies. Su's complaint that AmCham has not recognized the PCC's efforts to amend terms and conditions also rings hollow in that the amendments Su touts are advisory only and that the situation for U.S. companies bidding on government contracts has not changed. AIT welcomes the PCC's plan to provide written comments in response to the White Paper and will use these comments to engage the PCC in a discussion about how to address the criticisms raised by U.S. companies.

PAAL